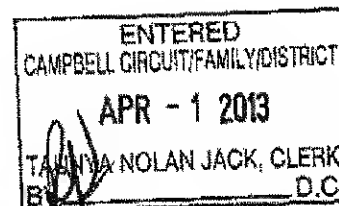


COMMONWEALTH OF KENTUCKY
CAMPBELL CIRCUIT COURT
DIVISION 1
CASE NO. 12-CI-0089



CHARLIE COLEMAN, *et al.*

PLAINTIFFS

v.

CAMPBELL COUNTY LIBRARY
BOARD OF TRUSTEES

DEFENDANT

ORDER

This matter is before the Court on the Defendant's Motion for Summary Judgment on Count I of the Plaintiffs' Complaint which the Defendant, Campbell County Library Board of Trustees, filed on November 21, 2012. The Plaintiffs, Charlie Coleman, *et al.*, filed a Response and a Counter Motion for Summary Judgment as to the Declaratory Action (Count I) on December 7, 2012. The Defendant filed a Reply on December 26, 2012. On February 12, 2013, the Parties appeared before the Court for oral argument.

BACKGROUND

The Campbell County Library system is funded, in large part, through taxes collected from landowners in Campbell County. The amount a landowner owes towards the Library Tax is proportional to the assessed value of the landowner's property. A tax which is proportional to property value is known as an ad valorem tax. This case involves a dispute between the Campbell Count Library Board of Trustees ("the Library") and a group of Campbell County landowners ("the Taxpayers") over increases in the Library's ad valorem tax rate ("the Library

Tax Rate"). Specifically, the parties dispute which statute governs the procedure for increasing the Library Tax Rate. The Library argues that KRS Chapter 132 governs the Library Tax Rate. The Library further argues that the Library Tax Rate must be set according to the formula for a "Compensating tax rate" as defined in KRS 132.010(6). The Taxpayers argue that KRS 173.790 governs the Library Tax Rate. The Taxpayers further argue that the Library Tax rate cannot be increased unless the petition procedures of KRS 173.790 are followed. In their motions, the Parties have asked this Court for a declaratory judgment as to which statute governs the Library Tax Rate.

HISTORY

The Campbell County Library was created in 1978 via petition pursuant to KRS 173.710 - .800. Included within those statutory provisions is KRS 173.790 which states, in part, that an ad valorem tax levied by a library organized by petition:

. . . shall not be increased or decreased unless a duly certified petition requesting an increase or decrease in the tax rate of a specifically stated amount is signed by fifty-one percent (51%) of the number of duly qualified voters voting at the last general election . . .

In 1979, the Kentucky General Assembly enacted House Bill 44. As stated in the Preamble to the Act, House Bill 44 was enacted with the intent of reducing "the impact of inflation on property taxes, both state and local, without reducing necessary governmental services." After the adoption of House Bill 44, codified in KRS Chapter 132, the Library began levying its ad valorem tax rate based upon the formula for a "Compensating tax rate" as set forth in KRS 132.010. KRS 132.010 defines "Compensating tax rate", in part, as:

. . . that rate which, rounded to the next higher one-tenth of one cent (\$0.001) per one hundred dollars (\$100) of assessed value and applied to the current year's assessment of the property subject to

taxation by a taxing district, . . . produces an amount of revenue approximately equal to that produced in the preceding year from real property. . .

In other words, the "Compensating tax rate" adjusts based on property value fluctuations in order to provide consistent tax revenues from year to year. The Library argues that they set the Library Tax Rate according to the formula for "Compensating tax rate" because of KRS 132.023. KRS 132.023 states, in part:

No taxing district . . . shall levy a tax rate which exceeds the "Compensating tax rate" defined in KRS 132.010, until the taxing district has complied with the provisions of subsection (2) of this section.

At the time of the Library's creation in 1978, the Library Tax Rate was set at \$0.30 per thousand dollars of assessed property valuation. The Library Tax Rate has continued to increase until 2010 when it reached a high of \$0.72 per thousand dollars of value. As of 2011, the Library Tax Rate was set at \$0.457 per thousand dollars of value.

ANALYSIS

Summary judgment is appropriate where the record shows there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56.03. The issue before the Court is purely a matter of statutory interpretation; statutory interpretation is a question of law and, therefore, summary judgment is appropriate. Neurodiagnostics, Inc. v. Kentucky Farm Bureau Mut. Ins. Co., 250 S.W.3d 321 (Ky.2008).

The Library argues that administrative agencies in Kentucky interpret KRS Chapter 132 as governing a library's ad valorem tax rate and that this Court should give deference to those agency interpretations. As to questions of fact or the exercise of discretion by an administrative agency, judicial review is limited to whether the agency's decision was supported by substantial

evidence or whether the decision was arbitrary or unreasonable. Carter v. Craig, 574 S.W.2d 352 (Ky.App. 1978). However, statutory construction is a matter of law for the courts, and a reviewing court is not bound by an administrative body's interpretation of a statute. Delta Air Lines, Inc. v. Commonwealth Revenue Cabinet, Ky., 689 S.W.2d 14 (Ky.1985). Furthermore, an unambiguous statute is to be interpreted without resort to any outside aids. Gateway Construction Company v. Wallbaum, 356 S.W.2d 247 (Ky.1962). The issue in the present case is clearly one of law and the statutes involved are unambiguous. Therefore, this Court will interpret the statutes *de novo*.

Where two statutes are in apparent conflict, and their inconsistencies cannot be reconciled, "the one containing express and positive language relating to the particular subject should take precedence over a provision dealing with a matter in general terms." Commonwealth v. Martin, 777 S.W.2d 236 (Ky.App.1989). Moreover, it is the Court's duty to harmonize the law so as to give effect to both statutes. Allen v. McClendon, 967 S.W.2d 1 (Ky.1998). KRS 173.790 specifically refers to the "special ad valorem tax rate for the maintenance and operation of a public library district." KRS 132.023 and KRS 132.010 refer generally to taxing districts. Since KRS 173.790 specifically addresses the procedure for increasing or decreasing the Library Tax Rate, it must control over the general provisions of KRS Chapter 132. This interpretation gives effect to both statutes and prevents KRS 173.790 from being meaningless.

The Library argues that KRS 173.790 was repealed by implication when House Bill 44 was passed in 1979. This Court does not agree. A statute may be repealed by the express provision of a subsequent statute or by implication when the provisions of the earlier and later statutes are repugnant to each other and irreconcilable or when the subsequent statute covers the whole subject-matter of the former and is manifestly intended as a substitute for it. Hallahan v.

Sawyer, 390 S.W.2d 664 (Ky.1965). However, it is a well-settled rule of statutory construction that the repeal of an existing law by implication is not favored by the courts and a legislative enactment will not be interpreted as repealing by implication a prior statute unless the repugnancy is so clear as to admit no other reasonable construction. Tipton v. Brown, 126 S.W.2d 1067 (Ky.1939). Courts will presume that where the legislature intended a subsequent act to repeal a former one, it will so express itself so as to leave no doubt as to its purpose. Oldham County v. Arvin, 64 S.W.2d 907 (Ky.1933). As noted in Hardaway Management Co. v. Southerland, Ky., 977 S.W.2d 910 (Ky.1998), it is a maxim of statutory construction that repeal by implication is not favored and will not be upheld unless such intention clearly appears or unless the repugnancy is so clear as to admit no other reasonable construction. City of Eddyville v. City of Kuttawa, 343 S.W.2d 404 (Ky.1961).

This Court does not believe that KRS 173.790 and KRS Chapter 132 are repugnant and irreconcilable. The statutes can be reasonably construed in a manner that gives both statutes meaning and House Bill 44 contains no clear expression of intent to repeal KRS 173.790. Adopting the Library's view would render KRS 173.790 meaningless. Furthermore, this Court does not believe that KRS Chapter 132 covers the whole-subject matter of ad valorem tax rates to such an extent that it is manifestly intended as a substitute for KRS 173.790. Pursuant to KRS 173.790, a library tax created by a petition of the people of a county can only be changed by a petition of the people of that county. There is a certain logic to this procedure and there is no manifest indication that the Kentucky State Legislature intended that House Bill 44 take this power away from the people. For these reasons, this Court does not believe that House Bill 44 repealed KRS 173.790 by implication.

As further evidence of statutory meaning and legislative intent this Court looks to House Bill 36 enacted in 1984. House Bill 36 amended two statutes relevant to this case. House Bill 36 amended KRS 173.720 to state, in part:

Districts organized pursuant to the provisions of this section prior to July 13, 1984, shall be governed by the provisions of KRS 173.710 to 173.800.

Furthermore, House Bill 36 amended 173.790 to state, in part:

The special ad valorem tax rate for the maintenance and operation of a public library district created pursuant to KRS 173.710 to 173.800 before July 13, 1984, shall not be increased or decreased unless a duly certified petition requesting an increase or decrease in the tax rate of a specifically stated amount is signed by fifty-one percent (51%) of the number of duly qualified voters voting at the last general election in each county in the district . . . (emphasis added).

The only amendment to KRS 173.790 was the addition of the phrase "before July 13, 1984." Surely the legislature would not have added language to a statute they already intended to have been repealed by implication and thereby rendered meaningless. Moreover, KRS 173.720 was amended to state in no uncertain terms that library districts organized pursuant to KRS 173.720 (such as the Campbell County Library District) shall be governed by the provisions by the provisions of KRS 173.710 to 173.800. (Emphasis added). In KRS 446.010(29), our legislature pronounced that in statutory construction, "shall" is a mandatory term. In addition, KRS 446.080(4) provides that words and phrases are to "be construed according to the common and approved usage of language" unless a word has a certain technical meaning. The statutory language of KRS 173.720 and 173.790 is clear and unambiguous. The Library Tax Rate shall be governed by KRS 173.790. Wherefore;

IT IS ORDERED that Defendant's Motion for Summary Judgment as to Count I is **Overruled** and the Plaintiffs' Motion for Summary Judgment as to Count I is **Sustained**. Furthermore, the parties are ordered to come before the Court on April 25, 2013 at 9:00 A.M. for a Status Conference.

DATED: 3-29-13



JUDGE JULIE REINHARDT WARD

CC: Counsel of Record